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**SUBSTITUTE HOUSE BILL 2487**

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**State of Washington                      60th Legislature                      2008 Regular Session**

**By** House Judiciary (originally sponsored by Representatives Moeller and Morrell)

READ FIRST TIME 01/18/08.

1            AN ACT Relating to vulnerable adult protection orders; amending RCW  
2            74.34.120 and 74.34.135; and adding new sections to chapter 74.34 RCW.

3            BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4            NEW SECTION.    **Sec. 1.** A new section is added to chapter 74.34 RCW  
5            to read as follows:

6            (1) A copy of an order for protection granted under this chapter  
7            shall be forwarded by the clerk of the court on or before the next  
8            judicial day to the appropriate law enforcement agency specified in the  
9            order.

10           Upon receipt of the order, the law enforcement agency shall enter  
11           the order into the Washington crime information center system used by  
12           law enforcement agencies to list outstanding warrants. The order shall  
13           remain in the computer for the period stated in the order. The law  
14           enforcement agency shall only expunge from the Washington crime  
15           information center system orders that are expired, vacated, or  
16           superseded. Entry into the Washington crime information center system  
17           constitutes notice to all law enforcement agencies of the existence of  
18           the order. The order is fully enforceable in any county in the state.

1 (2) The information entered into the Washington crime information  
2 center system shall include notice to law enforcement whether the order  
3 was personally served, served by publication, or served by mail.

4 NEW SECTION. **Sec. 2.** A new section is added to chapter 74.34 RCW  
5 to read as follows:

6 (1) To prevent the issuance of competing protection orders in  
7 different courts and to give courts information needed for the issuance  
8 of orders, the court should, before entering an order for protection  
9 under this chapter, conduct a check of the judicial information system  
10 for the existence of other orders affecting the parties to the  
11 petition, criminal history of the parties, and other relevant  
12 information necessary to assist courts in issuing orders under this  
13 chapter.

14 (2) For the purposes of this section, "parties" includes an  
15 interested person who is filing the petition on behalf of a vulnerable  
16 adult, other than the vulnerable adult's court-appointed guardian or a  
17 representative of the department.

18 **Sec. 3.** RCW 74.34.120 and 2007 c 312 s 5 are each amended to read  
19 as follows:

20 (1) The court shall order a hearing on a petition under RCW  
21 74.34.110 not later than fourteen days from the date of filing the  
22 petition.

23 (2) Except as provided in section 5 or 6 of this act, personal  
24 service shall be made upon the respondent not less than six court days  
25 before the hearing. ((When good faith attempts to personally serve the  
26 respondent have been unsuccessful, the court shall permit service by  
27 mail or by publication.))

28 (3) When a petition under RCW 74.34.110 is filed by someone other  
29 than the vulnerable adult, notice of the petition and hearing must be  
30 personally served upon the vulnerable adult not less than six court  
31 days before the hearing, except as provided in section 5 or 6 of this  
32 act. In addition to copies of all pleadings filed by the petitioner,  
33 the petitioner shall provide a written notice to the vulnerable adult  
34 using the standard notice form developed under RCW 74.34.115. ~~((When~~  
35 ~~good faith attempts to personally serve the vulnerable adult have been~~

1 ~~unsuccessful, the court shall permit service by mail, or by publication~~  
2 ~~if the court determines that personal service and service by mail~~  
3 ~~cannot be obtained.))~~

4 (4) If timely personal service under subsections (2) and (3) of  
5 this section cannot be made, the court shall continue the hearing date  
6 ~~((until the substitute service approved by the court has been~~  
7 ~~satisfied))~~ and shall either require additional attempts at obtaining  
8 personal service or permit service by publication under section 5 of  
9 this act or service by mail under section 6 of this act.

10 (5)(a) A petitioner may move for temporary relief under chapter  
11 7.40 RCW. The court may continue any temporary order for protection  
12 granted under chapter 7.40 RCW until the hearing on a petition under  
13 RCW 74.34.110 is held.

14 (b) Written notice of the request for temporary relief must be  
15 provided to the respondent, and to the vulnerable adult if someone  
16 other than the vulnerable adult filed the petition. A temporary  
17 protection order may be granted without written notice to the  
18 respondent and vulnerable adult if it clearly appears from specific  
19 facts shown by affidavit or declaration that immediate and irreparable  
20 injury, loss, or damage would result to the vulnerable adult before the  
21 respondent and vulnerable adult can be served and heard, or that show  
22 the respondent and vulnerable adult cannot be served with notice, the  
23 efforts made to serve them, and the reasons why prior notice should not  
24 be required.

25 **Sec. 4.** RCW 74.34.135 and 2007 c 312 s 9 are each amended to read  
26 as follows:

27 (1) When a petition for protection under RCW 74.34.110 is filed by  
28 someone other than the vulnerable adult or the vulnerable adult's full  
29 guardian over either the person or the estate, or both, and the  
30 vulnerable adult for whom protection is sought advises the court at the  
31 hearing that he or she does not want all or part of the protection  
32 sought in the petition, then the court may dismiss the petition or the  
33 provisions that the vulnerable adult objects to and any protection  
34 order issued under RCW 74.34.120 or 74.34.130, or the court may take  
35 additional testimony or evidence, or order additional evidentiary  
36 hearings to determine whether the vulnerable adult is unable, due to  
37 incapacity, undue influence, or duress, to protect his or her person or

1 estate in connection with the issues raised in the petition or order.  
2 If an additional evidentiary hearing is ordered and the court  
3 determines that there is reason to believe that there is a genuine  
4 issue about whether the vulnerable adult is unable to protect his or  
5 her person or estate in connection with the issues raised in the  
6 petition or order, the court may issue a temporary order for protection  
7 of the vulnerable adult pending a decision after the evidentiary  
8 hearing.

9 (2) An evidentiary hearing on the issue of whether the vulnerable  
10 adult is unable, due to incapacity, undue influence, or duress, to  
11 protect his or her person or estate in connection with the issues  
12 raised in the petition or order, shall be held within fourteen days of  
13 entry of the temporary order for protection under subsection (1) of  
14 this section. If the court did not enter a temporary order for  
15 protection, the evidentiary hearing shall be held within fourteen days  
16 of the prior hearing on the petition. Except as provided in sections  
17 5 and 6 of this act, notice of the time and place of the evidentiary  
18 hearing shall be personally served upon the vulnerable adult and the  
19 respondent not less than six court days before the hearing. ((When  
20 good faith attempts to personally serve the vulnerable adult and the  
21 respondent have been unsuccessful, the court shall permit service by  
22 mail, or by publication if the court determines that personal service  
23 and service by mail cannot be obtained.)) If timely service cannot be  
24 made, the court ((may)) shall set a new hearing date and shall either  
25 require additional attempts at obtaining personal service or permit  
26 service by publication under section 5 of this act or service by mail  
27 under section 6 of this act. A hearing under this subsection is not  
28 necessary if the vulnerable adult has been determined to be fully  
29 incapacitated over either the person or the estate, or both, under the  
30 guardianship laws, chapter 11.88 RCW. If a hearing is scheduled under  
31 this subsection, the protection order shall remain in effect pending  
32 the court's decision at the subsequent hearing.

33 (3) At the hearing scheduled by the court, the court shall give the  
34 vulnerable adult, the respondent, the petitioner, and in the court's  
35 discretion other interested persons, the opportunity to testify and  
36 submit relevant evidence.

37 (4) If the court determines that the vulnerable adult is capable of  
38 protecting his or her person or estate in connection with the issues

1 raised in the petition, and the individual continues to object to the  
2 protection order, the court shall dismiss the order or may modify the  
3 order if agreed to by the vulnerable adult. If the court determines  
4 that the vulnerable adult is not capable of protecting his or her  
5 person or estate in connection with the issues raised in the petition  
6 or order, and that the individual continues to need protection, the  
7 court shall order relief consistent with RCW 74.34.130 as it deems  
8 necessary for the protection of the vulnerable adult. In the entry of  
9 any order that is inconsistent with the expressed wishes of the  
10 vulnerable adult, the court's order shall be governed by the  
11 legislative findings contained in RCW 74.34.005.

12 NEW SECTION. **Sec. 5.** A new section is added to chapter 74.34 RCW  
13 to read as follows:

14 (1) If the respondent, or the vulnerable adult where the petition  
15 is filed by someone other than the vulnerable adult, was not personally  
16 served with the petition, notice of hearing, and ex parte order before  
17 the hearing, the court shall reset the hearing for twenty-four days  
18 from the date of entry of the order and may order service by  
19 publication instead of personal service under the following  
20 circumstances:

21 (a) The sheriff, municipal officer, or other process server files  
22 an affidavit stating that the officer or process server was unable to  
23 complete personal service upon the party to be served. The affidavit  
24 must describe the number and types of attempts the officer made to  
25 complete service;

26 (b) The petitioner files an affidavit stating that the petitioner  
27 believes that the party to be served is hiding from the server to avoid  
28 service or is being hidden from the server to avoid service. The  
29 petitioner's affidavit must state the reasons for the belief that the  
30 party to be served is avoiding service or being hidden to avoid  
31 service;

32 (c) The server has deposited a copy of the summons, in  
33 substantially the form prescribed in subsection (3) of this section,  
34 notice of hearing, and the ex parte order of protection in the post  
35 office, directed to the party to be served at the party's last known  
36 address, unless the server states that the server does not know the  
37 address of the party to be served; and

1 (d) The court finds reasonable grounds exist to believe that the  
2 party to be served is concealing himself or herself to avoid service or  
3 is being hidden from the server to avoid service, and that further  
4 attempts to personally serve the party to be served would be futile or  
5 unduly burdensome.

6 (2) The court shall reissue the temporary order of protection not  
7 to exceed another twenty-four days from the date of reissuing the ex  
8 parte protection order and order to provide service by publication.

9 (3) The publication shall be made in a newspaper of general  
10 circulation in the county where the petition was brought and in the  
11 county of the last known address of the party to be served once a week  
12 for three consecutive weeks. The newspaper selected must be one of the  
13 three most widely circulated papers in the county. The publication of  
14 summons shall not be made until the court orders service by publication  
15 under this section. Service of the summons shall be considered  
16 complete when the publication has been made for three consecutive  
17 weeks. The summons must be signed by the petitioner. The summons  
18 shall contain the date of the first publication, and shall require the  
19 respondent upon whom service by publication is desired to appear and  
20 answer the petition on the date set for the hearing. The summons shall  
21 also contain a brief statement of the reason for the petition and a  
22 summary of the provisions under the ex parte order. The summons shall  
23 be essentially in the following form:

24 In the ..... court of the state of Washington for  
25 the county of .....

26 ....., Petitioner

27 vs. No. ....

28 ....., Respondent

29 The state of Washington to ..... (respondent):



1        NEW SECTION.   **Sec. 7.**   A new section is added to chapter 74.34 RCW  
2   to read as follows:

3        Following completion of service by publication as provided in  
4   section 5 of this act or by mail as provided in section 6 of this act,  
5   if the party served by publication or by mail fails to appear at the  
6   hearing, the court may issue an order of protection as provided in RCW  
7   74.34.130.

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